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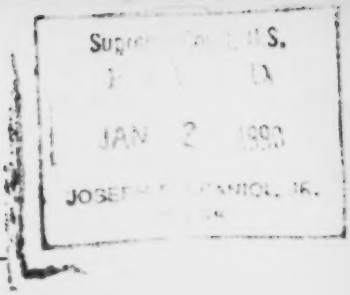

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

FRANK J. CAMOSCIO,

PETITIONER,

VS.

BOARD OF REGISTRATION IN PODIATRY

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

PETITION FOR WRIT OF CERTIORARI

FRANK J. CAMOSCIO
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QUESTION PRESENTED

A. SHOULD THE PETITIONER BE DENIED THE RIGHT TO EARN HIS LIVELIHOOD AS A PODIATRIST WHEN A CORRUPT STATE BOARD REMOVED HIS PODIATRIC LICENSE FRAUDULENTLY AND THE BOARD EVEN ACKNOWLEDGES THAT FRAUD TOOK PLACE UPON THE PETITIONER AND THE COURT BUT THE BOARD STILL REFUSES TO REINSTATE IT.

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PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

Petitioner, Frank J. Camoscio, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the First Circuit entered in the above-entitled cause on June 2, 1989.

I.

OPINION BELOW

The memorandum opinion of the Court of Appeals is attached as Appendix A. Appendix B represents the Court of Appeals' opinion for the petition-

er's petition for in banc re-hearing. Appendix C represents the lower court's opinion in this case.

II.

JURISDICTION

The opinion of the Court of Appeals for the First Circuit was filed on June 2, 1989 and on October 10, 1989. The jurisdiction of this Court is invoked pursuant to 62 Stat. 928, 28 U.S.C. § 1254(1).

III.

CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment, Section 1 of the United States Constitution

provides:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

IV.

STATEMENT OF FACTS

The petitioner, Frank J. Camoscio, is being denied by the Board of Regis-

tration in Podiatry the liberty to pursue his occupation. The petitioner filed a suit in Federal Court for constitutional violations when the Board of Registration in Podiatry refused to restore the petitioner's podiatric license, even though the petitioner can prove that the Board had removed it fraudulently.

The petitioner offered as proof both to the Board of Registration in Podiatry and the lower federal court default judgments entered against Thomas F. Connolly for conspiring to remove the petitioner's podiatric license fraudulently, Lloyd Smith for presenting false testimony against the petitioner which resulted in the loss of the petitioner's podiatric license and Jonathan Scarlet for also presenting false testimony against the peti-

tioner which resulted in the loss of the petitioner's podiatric license. Default Judgments were entered against these individuals on April 1, 1988.

The Board of Registration's attorney does not deny the fact that Default Judgment was entered against Thomas Connolly, Lloyd Smith and Jonathan Scarlett as shown in their motion entitled Memorandum of Law in Support of Defendant's Motion to Dismiss. On page 2 of this memorandum, Countess C. Williams the assistant attorney general stated, I will now quote from page 2 of this document. "For the purposes of this motion, however, the Board concedes that default judgments were entered in the above-described actions."

V.

REASONS FOR GRANTING THE WRIT

A. THIS CASE PROVIDES THIS COURT WITH AN OPPORTUNITY TO DELINEATE THE BOUNDARIES AND JURISDICTION OF THE FEDERAL COURT TO ACT ON CIVIL RIGHTS VIOLATIONS OF THE FOURTEENTH AMENDMENT.

The petitioner argues that his podiatric license be restored immediately since the respondent agrees that Default Judgment was entered against both medical witnesses for committing perjury against the petitioner which resulted in the loss of his podiatric license. The respondent also agreed that Default Judgment was entered against Thomas Connolly, ex-Chairman of the Board of Registration in Podiatry, for conspiring to fraudulently

remove the petitioner's podiatric license.

The petitioner only filed suit in federal court for civil rights violations under Title 42 § 1983, 1985, 1986 and 1988 after the respondent failed to restore his podiatric license. The petitioner sent copies of the complaints filed against Thomas Connolly, Lloyd Smith and Jonathan Scarlet to the respondent outlining the fraud perpetrated upon the petitioner and the court.

The petitioner states that this is a violation of civil rights since the Board of Registration in Podiatry acted under the color of state law to deny the petitioner the right to earn his livelihood and refuses to reinstate it even though they acknowledge that it was taken away fraudulently as proven

by the three default judgments. The petitioner cites the following cases: Hogge v. Hedrick, D.C. Va. 1975, 391 F. Supp. 91, "This section giving right of action in tort to an individual whose federal rights are infringed by any person acting under color of state law confers jurisdiction on federal district courts to hear a civil rights action for both monetary and equitable relief against municipal officers in their official capacities."; Mansell v. Saunders, C.A. Fla. 1967, 372 F. 2d 573, "This section providing civil action for deprivation of rights embraces deprivation of both due process of law and equal protection of laws, it contemplates such deprivation through unconstitutional application of law by conspiracy or otherwise and it permits damages, including punitive damages.";

Hoffman v. Halden, C.A. Or. 1959, 268 F. 2d 280. See also, Agnew v. City of Compton, C.A. Cal. 1957, 239 F. 2d 226, certiorari denied 77 S. Ct. 868, 353 U.S. 959, 1 L. Ed 2d 910, "An action based on this section providing that every person who under color of any statute, ordinance, etc. of any state or territory subjects any citizen of United States or other person within jurisdiction thereof to deprivation of any rights, privileges or immunities securities by the Constitution and laws shall be liable to injured party is not limited to due process, but extends also to denial of equal protection." and Keker v. Procunier, D.C. Cal. 1975, 398 F. Supp. 756, "It is proper for a person adversely affected by state action to bring a cause of action under this section on grounds of denial of

equal protection."

VI.

CONCLUSION

This case presents an important opportunity for the Court to set guidelines for the federal court to act on civil rights violations.

Respectfully submitted,

Frank J. Camoscio

Frank J. Camoscio
Pro se
252 Hanover Street
Boston, Massachusetts 02113

DATED: December 29, 1989

Domenic Bruno
NOTARY PUBLIC
My Commission Expires May 29, 1992
Domenic Bruno
12/29/89

CERTIFICATE OF SERVICE

I hereby certify that three copies of the foregoing Petition For Writ of Certiorari were mailed to Countess C. Williams, Assistant Attorney General, One Ashburton Place, Boston, Massachusetts 02102, Attorney for Respondent Board of Registration Podiatry on this 29th day of December 1989.

I hereby certify that all the statements contained in my Certificate of Service are true and are made under the pains and penalties of perjury.

Frank J. Camoscio

Frank J. Camoscio
Pro Se

Domenic Bruno
NOTARY PUBLIC
My Commission Expires May 29, 1992
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APPENDIX

United States Court of Appeals

For the First Circuit

No. 88-2092

FRANK J. CAMOSCIO,

Plaintiff, Appellant,

v.

BOARD OF REGISTRATION PODIATRY,

Defendant, Appellee.

APPEAL FROM THE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

[Hon. Douglas P. Woodlock,

U.S. District Judge]

Before

Bownes, Breyer and Torruella,

Circuit Judges.

Frank J. Camoscio on brief pro se.

Countess C. Williams, Assistant Attorney General, and James M. Shannon, Attorney General, on brief for appellee.

June 2, 1989

Per Curiam. After carefully reviewing the briefs and record in this case, we affirm the judgment of the district court for essentially the reasons stated therein.

We only note that the prior federal suit also bars this second action. See Manego v. Orleans Bd. of Trade, 773 F. 2d 1, 5 (1st Cir. 1985), cert. denied, 475 U.S. 1084 (1986).

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 88-2092

FRANK J. CAMOSCIO,
Plaintiff, Appellant,

v.

BOARD OF REGISTRATION PODIATRY,
Defendant, Appellee.

Before

Campbell, Chief Judge,
Bownes, Breyer, Torruella and Selya,
Circuit Judges.

ORDER OF COURT

Entered October 10, 1989

The petition for in banc rehearing is denied.

By the Court:
Francis P. Scigliano
Clerk.

[cc: Mr. Camoscio and Ms. Williams]

Judge Douglas P. Woodlock
United States District Court Judge
Memorandum and Order
Dated July 25, 1988

Dr. Frank J. Camoscio, a pro se plaintiff, brings this action alleging that his license to practice podiatry was improperly revoked by the Commonwealth's Board of Registration in Podiatry ("Board"). The plaintiff alleges that the revocation was fraudulent because witnesses against him lied at his hearing.

This is not the first complaint filed by the plaintiff pertaining to the status of his license. He originally filed suit in state Superior Court concerning an earlier suspension of his license. Judgment entered against him. On appeal, the Supreme Judicial Court affirmed the trial court.[1]

The plaintiff's second suit pertained to a subsequent revocation of his license by the Board. The Supreme Judicial Court again rejected Dr. Camoscio's claim that the Board had acted improperly.

The record shows an adequate basis for the board to investigate the matter and to issue a notice to show cause to the appellant.

. . .

[Camoscio] presented no evidence that the hearing officer or any witness was, or was likely to have been, unfairly influenced against him by any board member. . . .

Other arguments are without merit. . . . On a review of the transcript of the proceeding, consisting of 801 pages, we see no denial of procedural due process to the appellant. The hear-

ing officer handled fairly the not inconsiderable problems presented by the appellant's representation of himself. . . . The appellant was given a full opportunity to present his case. He did not testify by his own choice. He does not argue here that the evidence did not warrant the hearing officer's findings, adopted by the board. The assertion that certain witnesses lied presents no

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[1]The SJC's rescript opinion outlined the case as it existed in 1982.

The plaintiff was first suspended on March 8, 1978, for physically assaulting a patient. He was suspended for six months. There was substantial evidence to support this finding. . . . There is no substance to the plaintiff's argument that certain members of

the board were biased and prejudiced against him.

The plaintiff was found to have continued practicing podiatry during the six-month period of the first suspension. Here, too, there was substantial evidence to support the finding. . . . Equally without merit is the charge of bias and partiality on the part of the hearing officer who conducted the second hearing. . . . Camoscio v. Board of Registration in Podiatry, 385 Mass. 1002, 1003, cert. denied, 457 U.S. 1139(1982).

questions for appellate consideration. The credibility of witnesses was for the agency. Camoscio v. Board of Registration in Podiatry, 394 Mass. 1006, 1006-1007 (1985).

Later in 1985, Dr. Camoscio, un-

satisfied with the decision of the SJC, sought to reopen the case by filing in federal court essentially the same complaint he previously had filed in state court. Camoscio v. Board of Registration in Podiatry, No. 85-3460-MA, slip op. (D.Mass. November 12, 1985). In his memorandum dismissing the case, Judge Mazzone held that the second SJC opinion

> bars Camoscio's section 1983 claim because the procedural errors were all raised, considered and rejected below -- i.e., it has issue preclusive effect. The decision also has claim preclusive effect: even if Camoscio alleges federal constitutional claims for the first time here, the Supreme Judicial Court decision forecloses litigation 'of

> claims which could have been presented in the first action.' Plainly, Camoscio cannot avoid the preclusive effect of the earlier state court litigation simply by crafting the same allegations into a section 1983 complaint.

Id. at 8 (citation omitted).

In this case, the plaintiff once again attempts to challenge the Board's revocation of his license. Although the basis of the alleged jurisdiction of this court is somewhat novel,[2] I am precluded by law from considering the merits of the plaintiff's case. Federal law provides that

---

[2]The suit is filed "under United States Constitution, Amendments 6, 14, and 1 under Rule 9 of

> Federal Rules of Civil Procedure and under Title 42, sections 1983, 1985, Complaint at 1.

"judicial proceedings [in any state] shall have the same full faith and credit in every court within the United States . . . ."28 U.S.C. § 1738. The Supreme Court has construed this statute -- itself derived from Article IV, section 1 of the United States Constitution -- as precluding federal courts from relitigating claims previously adjudicated in state courts.

> The preclusive effect of a state court judgment in a subsequent federal lawsuit generally is determined by the full faith and credit statute, which provides that state judicial proceedings shall have the same full faith and credit in every court with-

> in the United States . . . as they have by law or usage in the courts of such State . . . from which they are taken.' This statute directs a federal court to refer to the preclusion law of the State in which judgment was rendered.

Marrese v. American Academy of Orthopaedic Surgeons, 470 U.S. 373, 376, reh'g denied, 471 U.S. 1062 (1985). I must, therefore, look to Massachusetts law to determine its standard for claim preclusion (i.e., res judicata).

Only recently, the SJC restated the appropriate standard.

> The doctrine of claim preclusion makes a valid, final judgment conclusive on the parties and their privies, and bars further litigation of all matters that were or should have been ad-

judicated in the action. This is so even though the claimant is prepared in a second action to present different evidence or legal theories to support his claim, or seeks different remedies. Heacock v. Heacock, 402 Mass. 21, 23 (1988) (citations omitted).

By the clear teaching of Heacock, the plaintiff is precluded from bringing his action in federal court. The plaintiff's present claim that the Board fraudulently revoked his license was litigated in state court and was rejected by the Supreme Judicial Court. The plaintiff is again attempting to litigate an issue that was rejected by the highest Court in the Commonwealth and that was also dismissed by Judge Mazzone.

I hereby ORDER that this case be dismissed with prejudice.

DOUGLAS P. WOODLOCK
UNITED STATES DISTRICT JUDGE

Judge Douglas P. Woodlock

United States District Court Judge

Order of Dismissal

Dated July 28, 1988

ORDER OF DISMISSAL

WOODLOCK, D.J.

In accordance with the Memorandum and Order issued on July 25, 1988, allowing the Defendant's Motion to Dismiss, it is hereby ORDERED that the above-entitled action be and hereby is dismissed with prejudice.

_____

Deputy Clerk

Date: July 28, 1988

Judge Douglas P. Woodlock
United States District Court Judge
Decision dated October 7, 1988
On Defendant's Motion for Entry of
Judgment

10/7/88. DENIED, the "Order of Dismissal" constitutes the separate document reflecting judgment for purposes of Fed. R. Civ. P. 58.

Douglas P. Woodlock
U.S.D.J.